

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
(ST. LOUIS) DIVISION

IN RE:	§	
	§	
JULIA A. FISH,	§	CASE NO. 14-41200-CER
	§	CHAPTER 7
	§	
DEBTOR.	§	Response due: 9/2/2014
	§	

SOUTHWEST BANK'S MOTION FOR SANCTIONS

PLEASE TAKE NOTICE: ANY RESPONSIVE PLEADING IN OPPOSITION TO THIS MOTION MUST BE FILED IN WRITING NO LATER THAN 21 DAYS FROM THE DATE OF SERVICE OF THIS MOTION AS SHOWN ON THE CERTIFICATE OF SERVICE. (See L.R. 9013-1(B) and 9061(B)) THE RESPONSE MUST BE SERVED AT THE TIME OF FILING UPON THE UNDERSIGNED AND UPON ALL ENTITIES DESCRIBED IN L.R. 9013-1(A). THE COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE TO ANY PARTY UPON EXPIRATION OF THE RESPONSE PERIOD IF NO RESPONSE IS FILED.

IF A RESPONSE OR OBJECTION IS FILED, THE MOVANT, APPLICANT OR CLAIM OBJECTOR SHALL SET THE MATTER FOR HEARING AND PROVIDE NOTICE THEREOF TO THE RESPONDENT AND ALL ENTITIES DESCRIBED IN L.R. 9013-1(A).

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE CHARLES RENDLEN, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, SOUTHWEST BANK ("Southwest" and "Creditor"), and files this, its Motion for Sanctions against Debtor, **JULIE FISH**, and in support thereof will show the Court as follows:

I. BACKGROUND

1. On May 28, 2013, Creditor entered an agreement with Nomad Adventures, LLC through its principals, Ms. Fish and Ms. Damon, that Nomad Adventures, LLC would organize a trip for Southwest's travel club (*See* Agreement attached as Exhibit "A").

2. Debtor Julie Fish owns a 50% share in the travel agency Nomad Adventures, LLC with her partner, Susan Damon.

3. The agreement included the cost of airfare, hotels, insurance and a cruise. The total cost per person would range from \$6,031.00 to \$7,830.00. Southwest Bank's Travel Club reserved 32 spaces on the trip with an initial deposit of \$800.00 to create the trip, and an additional deposit of \$500.00 per person when each traveler signed up for the trip. Southwest Bank's Travel Club paid Nomad \$31,967.00. After representing that all of the \$31,967.00 was applied to the trip, Nomad urged Southwest Bank's Travel Club to send immediate funds in the amount of \$121,716.00. Southwest paid the \$121,716.00 with a cashier's check, #155332, which was deposited at U.S. Bank into Nomad's account. In reality, only \$18,625.00 was applied to the trip. There remains \$135,058.00 of the money paid by Southwest unaccounted for to date.

4. Within weeks of receiving the final payment from the Debtor, Nomad sent a letter to Southwest stating that Nomad Adventures, LLC was going out of business. The letter stated that Southwest was to contact corporate counsel for Nomad Adventures, LLC, Robert Eggman. Southwest attempted to contact Mr. Eggman who stated that he had no information and instructed Southwest not to contact him.

5. Nomad Adventures, LLC has not filed bankruptcy, and is currently listed as an active company on the Missouri Secretary of State website. Due to the actions of Nomad Adventures, LLC and its principals, including Debtor, the trips were not booked. Since

Southwest Bank's Travel Club had pre-existing obligations with its customers, it was damaged by having to book trips itself to meet the obligations to its customers.

6 On February 26, 2014, Julie Fish filed a voluntary Chapter 7 Petition, Schedules and Statements. None of the original documents filed with the Court listed Southwest Bank as a creditor, and Southwest Bank was not provided notice of the bankruptcy (Doc. No. 1).

7. In the means test filed by Debtor as part of the Schedules and Statement of Financial Affairs, Ms. Fish made the verified statement that she had an average monthly income of \$2,152.77. Ms. Fish also stated in the Schedules that she was unemployed (Doc. No. 1).

8. On March 21, 2014, the first 341 Meeting of the Creditors occurred.

9. On June 15, 2014, over sixty (60) days after the first 341 Meeting of the Creditors occurred, Debtor filed Amended Schedules and Statements that listed Southwest Bank as a creditor based on the Debtor's personal liability for the amount of \$108,000.00 from Nomad Adventures, LLC (Doc. No. 16). This was the first notice Southwest had that the Debtor had filed bankruptcy.

10. On July 21, 2014, counsel for Southwest attended the continued 341 Meeting of Creditors for Ms. Fish. At said meeting, Ms. Fish admitted that she had lied on her verified bankruptcy filings, stating she was unemployed at the time of filing. She additionally lied by stating as part of her means test, she had an average monthly income of \$2,152.77 for the six (6) months prior to bankruptcy. She admitted she had been employed by Nomad Adventures, LLC, and had received both a paycheck of approximately \$4,000 a month, and cash draws from the company during said time. She alleged that she did not remember how much had been taken from Nomad Adventures, LLC.

11. Following the July 21, 2014, 314 Meeting of Creditors, counsel for Southwest sent a letter to Debtor's counsel requesting, (1) the Errors and Omissions policy for Nomad Adventures, LLC, (2) Bank Statements from Nomad Adventures, LLC, (3) documents regarding the creation of Nomad Adventures, LLC, (4) Nomad Adventures, LLC's tax returns for the years 2013 and 2014, (5) the retainer letter of corporate counsel for Nomad Adventures, LLC, and (6) Ms. Fish's personal bank statements that reflect all payments received from Nomad in the six (6) months prior to bankruptcy.

12. In response to said letter, Debtor's counsel only provided to Southwest the Errors and Omissions policy, and failed to provide any of the other documents requested.

13. On or about August 7, 2014, Southwest Bank filed an Objection to Discharge and Dischargeability against Ms. Fish, which was based in part on her fraudulent claims in her original schedules.¹ (Doc. No. 30 and Doc. No. 35).

14. On August 7, 2014, Debtor filed a Motion to Dismiss (Doc. No. 32) and Amended Chapter 7 Statement of Current Monthly Income and Means-Test (Doc. No. 31). The Motion to Dismiss states, "Debtor, upon additional information and belief, has provided her attorney with a payroll report regarding the total amount of wages and salary paid by Nomad Adventures LLC to Debtor and that an amended Form B22, Means Test Form, was necessary and that the amended Form B22 indicated that Debtor is not eligible for the Chapter 7 Bankruptcy Relief at this time and therefore Debtor seeks the dismissal of her case." (Doc. No. 32).

15. In the Amended Chapter 7 Statement of Current Monthly Income and Means-Test Calculation filed by Debtor as part of the Schedules and Statement of Financial Affairs, Ms. Fish

¹ On August 7, 2014, Southwest filed an Objection to Discharge and Complaint Seeking Damages. (Doc. No. 30) The Objection to Discharge and Complaint Seeking Damages was withdrawn on August 8, 2014 (Doc. No. 33). On August 8, 2014, Southwest re-filed the Objection to Discharge and Dischargeability as an Adversary Proceeding. (Doc. No. 35).

made the verified statement that she had an average monthly income of \$10,260.00, which was substantially higher than the \$2,152.77 originally reported (Doc. No. 31). Of the \$10,260.00 reported, \$2,500.00 was listed as gross wages, and \$6,632.00 as income from the operation of a business. Upon information and belief, Nomad Adventures, LLC was the only business owned by the Debtor and the only employer that she had.

II. ARGUMENT AND AUTHORITIES

16. The Court can impose sanctions on a person who signed a pleading in violation of Federal Rules of Bankruptcy Procedure 9011.

17. Bankruptcy Rule 9011(b) provides in part:

(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying to the best of that person's knowledge, information, and belief, formed after an inquiry reasonably under the circumstances;

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on the lack of information or belief.

Fed. R. Bankr. P. 9011(b).

18. Bankruptcy Rule 9011(c) provides for sanctions and states in relevant part:

(c) SANCTIONS. If, after notice and reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

19. Under Rule 9011, an award for sanctions requires a showing of objectively unreasonable conduct, or alternatively, a subjective determination of an improper purpose. *See In re Collins*, 250 B.R. 645, 661-62 (Bankr. N.D. Ill. 2000); *In re Mahendra*, 131 F.3d 750, 759 (8th Cir. 1997) (objective determination of whether a party's conduct was reasonable under the circumstances); *In re Marsch*, 36 F.3d 825, 830 (9th Cir. 1994) (consider frivolousness and improper purpose on a sliding scale; the more compelling the showing as to one element, the less decisive need to show the other); *Singer Furniture Acquisition Corp. v. SSMC, Inc.* 254 B.R. 46, 59 (M.D. Fla. 2000) (to award sanctions, one must establish only one of three alternatives: legally baseless, factually baseless, or improper purpose).

20. The Debtor's original means test was fraudulent, and failed to include a majority of the income that she received over the six (6) months prior to bankruptcy (Doc. No. 1). The Debtor knew, or should have known, that she had been employed by Nomad Adventures, LLC in the six (6) months prior to bankruptcy, and had received substantial income over that period of time from Nomad Adventures, LLC. At the time of filing her original verified schedules, the Debtor knew, or should have known, that there was no evidentiary support to her claim that she received an average monthly income of \$2,152.77 (Doc. No. 1).

21. The Debtor also knew, or should have known, at the time of filing her original Schedules and Statement of Financial Affairs, that Southwest Bank was a potential creditor due

to the Debtor's ownership in Nomad Adventures, LLC. Additionally, by waiting until June 15, 2014, over sixty (60) days after the first 314 Meeting of Creditors, to add Southwest Bank as a creditor the Debtor attempted to avoid Southwest being able to file an objection to discharge and dischargeability (Doc. No. 16).

22. The purpose of the Debtor's action was to cause unnecessary delay and needless increase of the cost of litigation incurred by Southwest Bank in its attempt to recover the funds taken by Nomad Adventures, LLC and its principals, including the Debtor.

23. Had the Debtor provided the correct information regarding the income received from Nomad Adventures, LLC, it would have been clear that Debtor was not entitled to relief under Chapter 7 of the Bankruptcy Code. Southwest would not have incurred the attorney's fees and costs of attending the 341 Meeting of Creditors, requesting supporting documentation from the Debtor's counsel, filing the objection to discharge and dischargeability, and filing this motion.

24. Southwest is requesting that the Court enter an order requiring the Debtor to pay for the attorney's fees and costs incurred by Southwest in relation to attending the 341 Meeting of the Creditors, requesting supporting documentation from the Debtor's counsel, filing the objection to discharge and dischargeability, drafting the Motion for Sanctions and attending any hearing on the Motion for Sanctions. In the interest of time, Southwest will supplement the exact amount of attorney's fees and costs incurred in a later filing.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Creditor Southwest Bank requests that the Court render sanctions against the Debtor, and award it attorneys' fees and costs, and such other and further relief to which Creditor Southwest Bank may be entitled to at law and in equity.

Respectfully submitted,

BY: /s/ Timothy Micah Dortch

TIMOTHY MICAH DORTCH,
Admitted Pro Hac Vice

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COUNSEL FOR SOUTHWEST BANK

CERTIFICATE OF SERVICE

In addition to those parties served with this document by the Court's CM/ECF system, the undersigned served a true and complete copy of this document by first class mail upon each of the parties at the address listed below and all parties on the attached matrix on August 12, 2014.

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/s/ Timothy Micah Dortch

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service Insolvency Unit P.O. Box 21126 Philadelphia, PA 19114	Portfolio Recovery Associates, LLC POB 12914 Norfolk VA 23541	US BANK N.A. BANKRUPTCY DEPARTMENT P.O. BOX 5229 CINCINNATI, OH 45201-5229
(d)US Bank Reserve Line P.O. Box 790408 Saint Louis, MO 63179-0408	(d)US Bank Reserve Line PO Box 5227 Cincinnati, OH 45201	

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Southwest Bank	(d)Wells Fargo Financial 4143 121st Street Urbandale, IA 50323-2310	End of Label Matrix Mailable recipients 99 Bypassed recipients 2 Total 101
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